LIBRARY
SUPREME COURT, U. S.

FILED
OCT 26 1973
MICHAEL RODAK, JR., CLERK

Supreme Court of the United States

OCTOBER TERM 1972

No. 72-1680

HOUSING AUTHORITY OF THE CITY OF NEW HAVEN, POLLY MOORER, and JOSEPH R. PETERS,

Petitioners,

v.

DONALD T. DORSEY, COMMISSIONER OF THE DEPARTMENT OF COMMUNITY AFFAIRS OF THE STATE OF CONNECTICUT; ROBERT I. BERDON, TREASURER OF THE STATE OF CONNECTICUT; ADOLF G. CARLSON, COMMISSIONER OF FINANCE AND CONTROL OF THE STATE OF CONNECTICUT; NATHAN G. AGOSTINELLI, COMPTROLLER OF THE STATE OF CONNECTICUT; and BARTHOLOMEW GUIDA, MAYOR OF THE CITY OF NEW HAVEN,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Connecticut

BRIEF FOR STATE RESPONDENTS IN OPPOSITION

ROBERT K. KILLIAN
Attorney General

JOHN K. JEPSON
Assistant Attorney General
1179 Main Street
Hartford, Connecticut 06115

Counsel for State Respondents

October 17, 1973

IN THE

Supreme Court of the United States

OCTOBER TERM 1972

No. 72-1680

HOUSING AUTHORITY OF THE CITY OF NEW HAVEN, POLLY MOORER, and JOSEPH R. PETERS,

Petitioners,

v.

DONALD T. DORSEY, COMMISSIONER OF THE DEPARTMENT OF COMMUNITY AFFAIRS OF THE STATE OF CONNECTICUT; ROBERT I. BERDON, TREASURER OF THE STATE OF CONNECTICUT; ADOLF G. CARLSON, COMMISSIONER OF FINANCE AND CONTROL OF THE STATE OF CONNECTICUT; NATHAN G. AGOSTINELLI, COMPTROLLER OF THE STATE OF CONNECTICUT; and BARTHOLOMEW GUIDA, MAYOR OF THE CITY OF NEW HAVEN,

Respondents,

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Connecticut

BRIEF FOR STATE RESPONDENTS IN OPPOSITION

QUESTIONS PRESENTED

1. Whether a tenant of a municipal housing authority established by a municipality pursuant to state law has a federal right to be eligible to serve as a housing authority commissioner contrary to state statutory and common law regarding conflicts of interest.

2. Whether a tenant of a municipal housing authority which may operate solely on local funds or on a combination of local and state funds acquires eligibility to serve as a commissioner contrary to state law if the housing authority receives some federal subsidies.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A. Constitutional provisions:

It is respectfully suggested that no constitutional provisions are involved despite petitioners' claims regarding the Supremacy Clause (Article VI, Clause 2) and the Fourteenth Amendment to the Constitution of the United States.

B. Statutory provisions:

The respondents are generally satisfied with the provisions set forth by the petitioners. Additionally, respondents set forth in their Appendices U.S. Department of Housing and Urban Development Circular RHM 7401.1, dated July 14, 1970 and Circular RHM 7401.1, dated January 28, 1971. (App. A and B)

STATEMENT OF THE CASE

The respondents while generally satisfied with the petitioners' Statement of the Case desire to add a few remarks.

The record contains no evidence of any tenant commissioners in Connecticut since late 1971 following the expiration of one tenant's term and a successor's appointment (R. p. 23) and the resignation of the other tenant commissioner (R. pp. 22, 23). It is nearly two years since tenants have served as commissioners in Connecticut.

All Connecticut public housing authorities, tenants thereof, municipal executive officers, town governing bodies and taxpayers were given notice of and an opportunity to participate in this case pursuant to Connecticut's declaratory judgment law (R. p. 31). Despite petitioners' claim of the great interest and importance of this matter, not one person other than the plaintiffs and named defendants appeared nor did anyone serve as amicus curiae.

The Record does not indicate that the Federal government, acting by the U.S. Department of Housing and Urban Development (HUD) or otherwise, was given any notice or opportunity to participate even though its Circular RHM 7401.1, dated January 28, 1971 states in part:

> "c. All local Housing Authorities are urged to closely examine their own operating policies and relevant state laws, as appropriate, and to make or recommend changes in those policies and laws in order to remove barriers to tenant appointment as Local Housing Authority Commissioners." (R. p. 24).

Petitioners' position, contrary to the above federal position, claims that federal law, constitutional and statutory, *requires* that tenants be eligible to serve as commissioners of their own authorities. (R. pp. 35, 36)

REASONS FOR DENYING THE WRIT

I.

THE CASE DOES NOT WARRANT REVIEW.

The state respondents by letter dated June 10, 1973 waived their right to oppose the petition for writ of certiorari believing that the petition lacks merit in that the case clearly does not warrant review. The petition might have been viewed differently if the federal government's position had been to require tenant eligibility rather than to merely encourage it. The petition might have been viewed differently if federal subsidy contracts were jeopardized even though many housing authorities operate on local and state funds alone. The plain fact is, however, that the federal government does not *require* tenant eligibility and tenant eligibility does not affect subsidy contracts. Thus it should be no surprise that the matter has not been presented to the Court before.

Petitioners indicate by letter in their Appendix C that as of June 1972 there were approximately 3300 local housing authorities in the country. Assuming petitioners figures are accurate — they were never presented to the Connecticut Courts — one is given an insight into the limited scope of petitioners alleged problem. Under date of August 27, 1973 the "HUD Newsletter" indicated that more than 80 local housing authorities have tenants on their boards of commissioners, approximately 2.5%. Even if those authorities are divided by the number of housing authorities having units under management, 2460 the figure is less than 3.5%. It is interesting to note that the number of housing authorities having tenant commissioners is fairly stable, for the "HUD Newsletter" of November

27, 1972 indicates that 86 local housing authorities had tenant representatives; whereas in 1970 the figure was 43.

It is recognized that the several states view the question differently, if it has been considered at all. At the time this question was being considered in Connecticut, a number of states provided information. Most indicated the question had not been considered or ruled upon. Indiana provided a copy of a statute specifically precluding tenant commissioners. (App. C). New York advised that a tenant under lease may be appointed and serve but could not renew his lease. (App. D). New York subsequently amended its law to allow tenants to serve as commissioners but restricted such service to not more than one tenant at a time per authority. (It may be noted Connecticut housing authority tenancies are frequently on a month to month basis involving constant renewals of tenancy.) North Carolina provided a copy of an opinion prohibiting a tenant from serving as a commissioner. (App. E). Respondents again emphasize, however, that different state approaches are not consistent with any existing federal requirement.

II.

A RULING AS TO 42 U.S.C. §1401 IS UNNECESSARY.

Petitioners strongly indicate that Federal law and regulation not only authorize but in fact require that tenants be eligible to serve as commissioners on local housing authorities. Petitioners have been unable, however, to produce any evidence in support of this claim. In fact the Petitioners' evidence demonstrated that local policies and laws controlled.

HUD Circular RHM 7401.1 dated 1-28-71 (App. B) for example clearly shows that local law and policy controls. (R. p. 24; Find. Par. 18) Section 2c of the Circular states:

> All Local Housing Authorities are urged to closely examine their own operating policies and relevant state laws, as appropriate, and to make or recommend changes in those policies and laws in order to remove barriers to tenant appointment as Local Housing Authority Commissioners.

In accordance with the HUD suggestion bills were introduced in the 1969, 1971, and 1972 Sessions of the Connecticut General Assembly which would have specifically authorized tenants to serve as commissioners. None has become law. Bill No. 7119, File No. 1381, 1969 Regular Session; Public Act 349, 1971 Regular Session and Veto message June 7, 1971 (Defendant Exhibit No. 1 and 2); Bill No. 272, File No. 243, 1972 Regular Session.

Petitioners rely heavily upon Title 42 USCA Section 1401 entitled Declaration of Policy. The section generally discusses the need to alleviate unemployment, to remedy unsafe and unsanitary housing and the acute shortage of low income housing, to make adequate provisions for larger families and elderly persons and "to vest in the local public housing agencies the maximum amount of responsibility . . ." The addition of the sense of Congress tenant commissioner sentence to Section 1401 on December 31, 1970, did not eliminate the above quoted policy nor did it impose any mandatory requirement. (R. p. 24, 33; Find. Par. 19, 86, 91)

The reading of HUD Circular 7401.1 dated 7-14-70, HUD Circular dated 1-28-71 and 42 USCA §1401 as amended December 31, 1971, Pub. L 91-609 demonstrates that the federal government is not opposed to having tenants serve as commissioners and in fact encourages such service. These items also make clear the fact that state law and local policy control and that the federal government clearly recognizes this fact.

One can readily understand Congress' unwillingness to dictate the makeup of each local housing authority in each of the fifty states — Connecticut alone has seventy-six housing authorities. So also such an approach would contradict the expressed Congressional policy of maximum local responsibility and in addition would raise some interesting constitutional questions with respect to federal-state relations.

The federal government has suggested that tenants be allowed to serve as commissioners — it has not, however, required that they be able to serve. It has not made tenant eligibility to serve as commissioners a prerequisite to the receipt of federal monies. The Petitioner, New Haven Housing Authority and the Respondent, City of New Haven, have clearly recognized this as the tenant commissioners Moorer and Peters are no longer serving and the other

commissioners are not tenants. (R. pp. 22, 23; Find. Par. 9, 11, 13, 14, 15, 16).

III.

THE SEVERAL STATES MAY DETERMINE THE EFFECTS OF CONFLICT OF INTEREST.

It is respectfully suggested that uniformity of housing authority composition is not a federal requirement nor a necessary adjunct to receipt of some federal assistance. Many housing authorities operate solely on local or local and state funds. In both instances there would be no reason for federal concern. It would seem that a claim of federal interest could be made only where some form of federal subsidy is provided, but even in that situation 42 U.S.C. § 1401 emphasizes the desirability of maximum local control. Housing authorities, in fact, are established locally based on powers derived from the state, although it is recognized that an initial impetus for the establishment of local housing authorities was derived from federal legislation in the late 1930s. If § 1401 was construed to require tenant eligibility for commissionerships and such service was contrary to State law, housing authorities could find themselves in a very difficult position. Clearly a housing authority operating solely on local funds would be subject to State law. The same would be true with respect to a housing authority operating on local and state funds. The problem would exist where a housing authority sought some federal subsidy for its programs. Possibly tenants would be required to serve or at least tenant eligibility demonstrated. If a housing authority operated on local, state and federal funds, would tenants be eligible in name only or would tenants serve and state funds be withheld? The types of problems above mentioned need not arise under § 1401 or the executive branches' circulars relating to tenant eligibility. Congress and HUD stated desires not requirements.

It should be noted that the Connecticut Courts have ruled against tenants serving not because they are tenants but because of the conflicts of interest involved in such service.

IV.

NO CONSTITUTIONAL RIGHTS ARE DENIED.

It may simply be stated that constitutional rights are not involved in the petitioners' claims. Tenants of private sponsor low income housing are not deprived of any opportunity to serve as commissioners of housing authorities. The Connecticut law only precludes a housing authority tenant from serving as a commissioner of that authority — a tenant serving as his own landlord.

CONCLUSION

It is respectfully suggested that for the above reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

ROBERT K. KILLIAN
Attorney General

JOHN K. JEPSON
Assistant Attorney General
1179 Main Street
Hartford, Connecticut 06115

Counsel for State Respondents

October 17, 1973